UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
SEVENTH REGION

COMAU, INC.
Respondent Employer

and **Cases 7-CA-52614 and 7-CA-52939**

AUTOMATED SYSTEMS WORKERS LOCAL 1123, affiliated with CARPENTERS INDUSTRIAL COUNCIL, UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA
Charging Party

and

COMAU EMPLOYEES ASSOCIATION (CEA)
Party in Interest

COMAU EMPLOYEES ASSOCIATION (CEA)
Respondent Union

and **Case 7-CB-16912**

AUTOMATED SYSTEMS WORKERS LOCAL 1123, affiliated with CARPENTERS INDUSTRIAL COUNCIL, UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA
Charging Party
_____/

RESPONDENT UNION CEA'S REPLY BRIEF IN SUPPORT OF ITS EXCEPTIONS

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TABLE OF AUTHORITIES

No additional authorities were cited.

INTRODUCTION

Most of the arguments raised by the Acting General Counsel in the Answering Brief have been previously addressed; only a few additional comments are in order.

ARGUMENT

Timing of the Employee Disaffection

The General Counsel again blurs the distinction between developments prior to the unfair labor practice and those occurring afterward. This is most evident in the discussion of when the employees became dissatisfied with the ASW, and why. For example, at page 8, the General Counsel argued that testimony at the St. Gobain hearing showed that the employees "were well aware of the proposed changes to their health care plan when they signed the decertification petition." But most of those witnesses testified that they signed the decertification petition before the unfair labor practice. They were aware of the pending health plan, but the pendency of the health plan was not an unfair labor practice. Their disaffection was a result of a legally permissible action by the employer, as well as of other problems and disagreements with the ASW.

The same is true of the decision by the ASW's executive committee to begin the decertification process, referred to at page 7 of the Answering Brief. The General Counsel correctly asserts that the pendency of the health plan was a factor in that process, but quietly ignores the fact that the employer's intent to implement the health plan was entirely legal and permissible. The committee's activity was prompted by the legally permissible announcement of the change in the health care plan, not by its later imposition.

Similarly, the General Counsel notes that 34 employees signed the decertification petition after March 1, 2009. But the General Counsel fails to mention that more than double that number

signed it before that date, i.e., before the unfair labor practice, and therefore as a consequence of entirely legal activities of the employer. The important point, repeatedly ignored by the ACG, is that mere awareness of the proposed healthcare plan is irrelevant to the case at hand. The burden was upon the General Counsel to show that it was the unfair labor practice, not the announcement of the health care plan, which caused the disaffection. The General Counsel did not meet that burden.

Multiple Causes of Discontent

The General Counsel argues in part four of the brief that the CEA "wildly misse[d] the mark" in reading the decision of the ALJ, suggesting that ALJ Carter did not rely solely on the unfair labor practice in assessing the causes of the disaffection. But while ALJ Carter did, indeed, recite the existence of those other causes, he gave essentially no consideration to those concerns. Instead, he relegated them to a dismissive footnote (Decision, p 20, fn 37). And as that footnote makes clear, the decisive factor in his decision, "even though there were other reasons for bargaining unit reasons to be unhappy with the ASW" was that the imposition of the health care plan caused employee disaffection. (Id) It is clear from Judge Carter's own words that as long as the unfair labor practice was a cause of employee disaffection, the other causes were irrelevant. Thus the CEA's argument is based, not upon a wildly inaccurate reading of Judge Carter's decision, but upon a particularly careful one.

The Remedy

The General Counsel asserts that an affirmative bargaining order is a "standard Board remedy." While it is true that affirmative bargaining orders are from time to time employed by the Board, the fact remains that such an order in this case would be inappropriate. It would create nothing more than the pretense of representation, and would violate the repeatedly-expressed

right and desire of the employees to select their own bargaining representative. It would exalt form over substance, cause the employees to distrust the collective bargaining process even more, and only postpone the inevitable day when the employees will be, at last, free to choose their own bargaining representative.

REQUEST FOR RELIEF

For all of the reasons set forth above, Respondent CEA requests that the Board respect the wishes of the men and women of the bargaining unit, reject the recommended opinion of the ALJ, and leave intact this bargaining unit's choice of bargaining representative.

Respectfully submitted,

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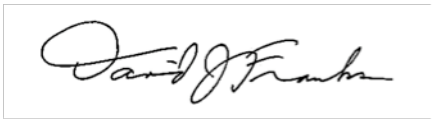

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